

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-018-JJF
)	
PFC. ROBERT C. LEGATES,)	
PFC. WHEATLEY, MILLSBORO)	
POLICE DEPARTMENT, TOWN OF)	
MILLSBORO,)	
)	
Defendants.)	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S "AMENDMENT" AND AMENDED COMPLAINT

1. Denied that the Town of Millsboro has a common policy that directs the Millsboro Police Department to use unreasonable and excessive force to obtain evidence.

2. Denied that the Millsboro Police Department directs police to violate civil law and use unreasonable and excessive force to obtain evidence.

3. Denied that Officer Wheatley and/or Officer Legates under direction of common policy used unreasonable or excessive force to obtain evidence on January 3, 2004 against plaintiff.

4. Denied that on January 3, 2004 under common policy and or lack of proper police training Officer Legates and/or Officer Wheatley physically assaulted plaintiff.

5. Admitted that Officer Legates and Officer Wheatley acted reasonably by assisting hospital personnel taking a blood sample from plaintiff, a suspected drunk driver, without plaintiff's consent at Beebe Hospital on January 3, 2004. Denied that defendants punched, kicked, slammed or assaulted plaintiff in any way.

6. Denied that plaintiff's refusal was allowed under law. Denied that any emotional and/or physical injuries resulted from defendants' conduct.

AFFIRMATIVE DEFENSES

7. Defendants are entitled to qualified immunity. Harlow v. Fitzgerald, 57 U.S.C. 800 (1982).

8. No action or conduct of defendants violated any clearly established statutory or constitutional right of which a reasonable person would have known.

9. Plaintiff's claims are barred by the County and Municipal Tort Claims Act, 10 Del. C. § 4011 et. seq.

10. Plaintiff was negligent in a manner which proximately caused his alleged injuries. Plaintiff was negligent in that:

- (a) he was intoxicated and/or under the influence of drugs;
- (b) he violently resisted police officers' lawful commands;

(c) he assaulted defendant Officer Wheatley
by kicking him and

(d) he assaulted and/or offensively touched Beebe Hospital
Nurse Carey Rutherford.

11. The actions of plaintiff were superseding and/or
intervening causes of his alleged injuries.

12. Plaintiff's refusal of consent to a blood draw gave the
defendant officers the legal authority to use reasonable force.

13. Plaintiff's Complaint should be dismissed because there
was no municipal custom or policy which caused plaintiff's
alleged harm.

WHEREFORE, Defendants request that the Complaint be
dismissed with costs and attorney fees assessed against
plaintiff.

AKIN & HERRON, P.A.

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